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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 02 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an architect. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner does not qualify for classification as a member of the professions holding an advanced degree and that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel notes two inconsistencies in the director's decision. The petitioner submits a new letter of support and an evaluation of his education and experience. We find that the petitioner does qualify as an advanced degree professional but that he has not established that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) provides, in pertinent part:

> A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) provides:

> To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree of a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The petitioner holds a Bachelor's degree in architecture from Bangladesh University of Engineering and Technology (BUET). The petitioner submitted his degree and an evaluation of his degree concluding that it was equivalent to a baccalaureate issued by an accredited U.S. university. The petitioner's occupation falls within the pertinent regulatory definition of a profession.

On his Form ETA-750B, the petitioner indicated that he worked as a junior architect for Riddhi Architects in Bangladesh from August 1992 to September 1994, as an assistant architect for the Housing and Development Board in Singapore from October 1994 to October 1996, as an architect for [redacted] Architects (OCBA) in Singapore from October 1996 to March 1999, as a project coordinator for [redacted] Inc. from September 1999 to September 2001 and as an architect for [redacted] and Associates from December 2001 to the time of filing, September 10, 2002. In support of this employment, the petitioner submitted employment letters.

The director concluded that the petitioner had not established that he was an advanced degree professional because he did not submit an evaluation of his education *and experience*. The petitioner does so on appeal. The evaluation reiterates that the petitioner's foreign degree is equivalent to a baccalaureate degree issued by an accredited U.S. university and concludes that the petitioner's education and at least five years of progressive experience are equivalent to a Master's degree issued by an accredited U.S. university.

As stated above, the evidence required to demonstrate the equivalent of an advanced degree is a U.S. baccalaureate degree or foreign equivalent and employment letters. Such evidence was in the record at the time the director issued his decision. Specifically, [redacted], Principal of OCBA, confirms that the petitioner worked there from October 1996 to March 1999. [redacted] P.E., President of Sami Engineering, Inc., confirms that the petitioner worked for that firm "for a two-year period" during which time he "was duly promoted." In a letter dated May 10, 2004 that accompanied the Form I-485 Application to Register Permanent Residence or Adjust Status, filed after the petition but before the director's final decision and incorporated into the record of proceedings, [redacted] Principal of Lance Bailey and Associates, Inc., asserts that the petitioner has been working there since October 1, 2001. These letters attest to more than five years of progressive experience. Moreover, that conclusion is now supported by the evaluation submitted on appeal.

In light of the above, the petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

The decision in *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Comm. 1998), sets forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, school architecture. On appeal, counsel asserts that the director was inconsistent regarding whether the proposed benefits of the petitioner's work was national in scope. We acknowledge that the director's discussion on this issue could have been clearer. When read carefully, however, it is apparent that the director concluded that the "*proposed* benefit" (emphasis added) would be national in scope but, in evaluating the final prong, the director questioned whether the petitioner had demonstrated that he would actually be able to provide benefits that were national in scope. As stated by the director, the final prong, whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications, is the only prong specific to the alien as opposed to his occupation in general. Thus, the director's different conclusions are not inherently contradictory. We will evaluate both conclusions below.

Initially, counsel noted the importance of education as demonstrated by the No Child Left Behind Act of 2001 and efforts by 31 states to reduce class size, requiring school construction. Counsel then discusses the petitioner's specific projects, more relevant to our discussion of the final prong. We have already acknowledged the intrinsic merit of the petitioner's work, school architecture. The issue now under

consideration is whether a school architect has the potential for a national impact. In discussing this prong, *Matter of New York. State Dep't. of Transp.*, 22 I&N Dec at 217, n.3, provides three examples of occupations in fields important to the national interest but that do not have a national impact: a provider of pro bono legal services, a schoolteacher in one school and a cook in one restaurant. The petitioner does not claim that he will serve as a school architecture consultant for multiple school districts, influencing guidelines for school construction nationally. Rather, he claims that he will work for one architectural firm designing individual schools. We find such work to be similar to the examples provided in *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 217, n.3. Thus, we withdraw the director's conclusion that the proposed benefits of this occupation will be national in scope.

Even if we were to conclude that the petitioner's work has the potential for benefits that are national in scope, we concur with the director that the petitioner has not established that he would do so to a greater extent than an available U.S. worker with the same minimum qualifications. In evaluating this issue, we note that eligibility for the waiver must ultimately rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner submitted his professional memberships and awards from Bangladesh Telephone, Shilpa Shangstha and the Institute of Architects, Bangladesh (IAB). Professional memberships and recognition from government entities are two of the regulatory criteria for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting two, or even the requisite three, criteria for that classification warrants a waiver of that requirement. Moreover, the petitioner submitted no evidence to establish the significance of his memberships, such as their membership requirements. We further note that the awards were issued in December 1989 and November 1992, whereas the petitioner only obtained his degree in August 1992 and had not yet worked on school construction projects.

The petitioner also submitted confirmation that the petitioner served as a member of a Jury Board during the 1997-1998 academic year at BUET. The record does not demonstrate that being asked to serve on a jury at your alma mater is indicative of an influence on the field as a whole.

In addition, the petitioner submitted an article authored by him purportedly published in the IAB newsletter in 1997. The article is not about school architecture and is not indicative of his influence in that area, or any other area, of architecture. Moreover, the copy of the article submitted bears no indication that it was published or distributed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, the petitioner submitted several reference letters, all from his immediate circle of colleagues. [redacted] the petitioner's design-studio teacher at BUET, asserts that the petitioner was an active member of IAB "and worked on numerous building projects throughout" Bangladesh. [redacted] does not explain how the ability to work in one's field is necessarily indicative of an influence on the field as a whole.

[redacted] a member of the petitioner's thesis committee and executive director of Riddhi Architects and Associates of Bangladesh where the petitioner worked, provides more detail regarding the petitioner's work in that country. Specifically, [redacted] characterizes the petitioner's thesis project as "a novel aesthetic and technical approach toward aquarium design not only by most efficiently preserving Bangladesh's deltaic marine life, but also by transforming a highly technical building into a major tourist attraction." [redacted] further states that he and the petitioner collaborated on "a number of trend-setting residential and commercial projects that drew national interest." [redacted] notes the importance of the petitioner's experience with designing buildings for dense urban conditions. These assertions are not supported by general or trade media coverage of the petitioner's projects in Bangladesh or comparable evidence of the petitioner's influence in the field in that country. While the petitioner need not demonstrate the type of major media coverage primarily about himself required for the more exclusive aliens of extraordinary ability classification pursuant to section 203(b)(1)(A) of the Act, it can be expected that a truly tend-setting project would receive some coverage in the general or trade media.

[redacted] a senior architect at OCBA, discusses the petitioner's work at that firm. Specifically, the petitioner worked on designs for five schools. The firm assigned the petitioner to study U.S. school architecture in 1996. He also designed the West View Primary School, "a renowned work of OCBA in recent years." Based on this design, OCBA assigned the petitioner another school project. [redacted] does not explain how the petitioner's new assignment at his job after completing an earlier assignment represents anything more than sufficient competence to remain employed.

Regarding the petitioner's employment in Alabama, the petitioner submitted the aforementioned letter from [redacted] asserts that the petitioner has "outstanding ability, especially in school design." [redacted] lists 11 school projects on which the petitioner worked. While [redacted] asserts that these projects were "through out the United States," it is not apparent from the list that any were outside a small block of southern States. [redacted] concludes that the petitioner is "highly skilled in using Auto-cad and Engineering Detailing software as well as graphic software with his architectural and engineering knowledge." [redacted] a construction manager who became familiar with the petitioner while he was familiarizing himself with U.S. architecture in San Francisco, provides similar information. Simple exposure to advanced technology, however, constitutes, essentially, occupational training which can be articulated on an application for a labor certification. *Id.* at 221. Assuming a shortage of architects skilled in these programs, such determinations fall under the jurisdiction of the Department of Labor. *See id.*

[redacted] asserts that the petitioner "stands out among architects for his combination of architectural knowledge and steel detailing experience." Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. [redacted] further asserts that the petitioner's contribution to the construction industry has been "praised by local and federal boards, including National Capital Planning Commission and the Commission of Fine Arts." [redacted] does not explain how this praise was expressed, whether through a staff member who communicated it privately or through an official certificate, award or honor. The primary source of this praise is not in the record. Thus, we are unable to determine the significance of this praise.

[redacted] III, a senior architect at [redacted] and Associates, provides more detail regarding the petitioner's projects at that firm. [redacted] states:

> My most recent work with [the petitioner] has been in the design and coordination of Thomson Elementary School, located in downtown Washington, DC. This project was very unique. It involves the complete renovation of an existing school that is listed on the Historical Registry of the Historical Preservation Office. Moreover, it involves the construction of a new addition, which will more than double the exiting square foot area. This school will be the first of its kind to provide both underground parking and elevated play areas.

While the project may be unique, the petitioner has not established that is has been influential. For example, there is no evidence that architectural or school trade journals have featured this design or that other school districts around the United States have expressed interest in similar designs as standards for their own schools.

On appeal, counsel asserts that the director failed to consider the petitioner's projects outside of the Washington D.C. area and his participation in national competitions "with great success." Working at firms in more than one location does not necessarily translate into an impact on the field as a whole. The record contains little evidence that the petitioner had competed successfully in national competitions as of the date of filing.

The letters submitted on appeal include a new letter from [redacted] and a letter from [redacted] Program Manager for the Washington Architectural Foundation [redacted] states that the Pentagon's approved the petitioner's ceremonial stage design. [redacted] further asserts that the petitioner's leading roll or LBA "helped LBA to win [a] Howard University – School of Communication design competition." The record does not reflect that either event took place prior to the date of filing. As such, this evidence is not relevant to the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Moreover, it is inherent to the field of architecture to secure projects. It is presumed that government agencies are a major source of contracts in the Washington D.C. area. Thus, it is not clear how acquiring approval for a government project demonstrates an influence on the field as a whole. In addition, the record contains no evidence regarding the significance of the design competition sponsored by Howard University. For example, the petitioner has not established whether winning designs are selected nationally or receive national coverage such that they might influence the field as a whole. [redacted] appears to discuss the petitioner's participation with a local foundation that occurred after the date of filing. This participation does not appear to reflect on the petitioner's eligibility as of the date of filing. *Id.*

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.